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Via Electronic Filing

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Response to Notice of Proposed Rulemaking and Request for Comments
In the Matter of Sponsorship Identification Rules and Embedded Advertising
MB Docket No. 08-90**

Dear Ms. Dortch:

I became interested in studying the Commission's sponsorship identification rules while taking a Communications Law course at the University of Houston Law Center. Having reviewed the Commission's Notice of Proposed Rulemaking and subsequent comments, it seems clear that the current system fails to accommodate the interests of consumer advocates. On the other hand, the television industry relies almost entirely on generating advertising revenue, so efforts must be made to preserve the profitability of broadcast television. I propose a solution that attempts to bridge the gap between comments submitted by consumer advocate groups and the members of the television industry.

A balanced approach to sponsorship identification rulemaking requires effective notice of embedded advertising to consumers; a limited footprint upon television programming; protection of youth viewers from deceptive practices; and minimal cost to the television industry. The current system provides virtually no notice to consumers that programming contains embedded advertising. The Commission should amend the current rules to bolster the sponsorship identification announcement requirement and ban embedded advertising altogether in programming targeted to children.

Amendment to 47 C.F.R. §§ 73.1212, 76.1615

The current "full and fair" disclosure rules require a sponsorship identification announcement be "made at any time during the course of the broadcast." The Commission has subsequently reminded broadcasters that the size of the lettering in the disclosure needs to be

sufficient to be readily legible to an average viewer and should remain on screen long enough to be read or heard by an average viewer. The Commission has not, however, codified specific time or letter size requirements for the disclosures, and instead relies upon broadcasters' "reasonable, good faith judgment" to implement sponsorship identification announcements.

This flexible approach taken by the FCC has resulted in an abuse of the system. Broadcasters who flash an announcement in tiny lettering during the end credits of a program satisfy the technical requirements without actually providing notice to the average viewer. In many cases, the end credits are squeezed so tightly onto the screen that they are completely illegible. We are left with a system in which consumers receive no notice of embedded advertising.

Commercial Alert has submitted the most extreme proposal in this docket, requesting a rule that requires broadcasters to flash a notice on the screen simultaneously while programming is being aired. Although this system would certainly fix the problem of notice to consumers, it would not be a feasible solution. Practically, application of such a rule would likely bring embedded advertising to an end altogether, which would unreasonably restrict the television industry's ability to generate advertising revenue.

Screen Actors Guild's approach would require a full-screen announcement twice during the programming—once at the beginning and once at the end. Although this would be a much better solution than that of Commercial Alert, it would not effectively cure the current notice problem for all consumers. Many viewers in today's market watch television on DVRs or a variety of non-cable platforms, such as Apple TV. Those consumers generally fast forward straight to programming and may miss the announcements at the beginning and the end.

As an alternative, I propose the following revisions to the current sponsorship identification rules:

- During any programming in which consideration is paid for embedded advertising, display a full-screen textual disclosure listing embedded advertisers who have paid to appear in that show.
- The screen should appear every thirty minutes at the end of any segment, just before a commercial break. It should stay on screen for no less than five seconds. The text should be read audibly concurrent with the textual display.
- The broadcaster may choose any segment after which to air the announcement, as long as it is not the last segment before the end credits.

This system would provide a much more effective notice for live viewers as well as those watching on DVR. Viewers are more likely to be paying full attention during the middle of the hour rather than at the very beginning or end of a show. Most people never even watch programming long enough to see the entire end credits. Displaying the disclosure for five seconds would even capture the attention of a DVR-viewer who is fast forwarding through the programming.

Displaying one full screen disclosure every half-hour would solve many of the problems raised by the current system. Increased transactional costs to broadcasters would equal the value of five seconds of advertising every half-hour. Although this may seem like a steep expense, the proliferation of embedded advertising revenue should help to offset the additional costs.

Ban on Embedded Advertising in Children's Programming

Children are particularly vulnerable to the effects of embedded advertising. Unlike adults, children are not perceptive enough to distinguish between program content and advertising. Moreover, the current system used by broadcasters would clearly not make children aware that advertisers have paid to include their product in programming.

Parents have a responsibility to monitor their child's television viewing. However, even when a parent sits a child down in front of an age-appropriate program containing embedded advertising, the product placement or integration may interfere with an otherwise benign show. Parents who choose to protect their children from the potential harm of embedded advertising are left with very few programming options in the absence of a complete ban of the practice in children's programs.

Sincerely,

Michael J. Hoffman